

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NYC VISION CAPITAL, INC., SYEDA MONDAL,
ELIE ISLAM, and WALI MONDAL,

Plaintiffs,

22-cv-3071 (LJL)

-v-

ORDERC21FC, LLC, ALAN SINGER, ERIC HILLMAN, and
ZACH SINGER,

Defendants.-----X

LEWIS J. LIMAN, United States District Judge:

Before the Court is Defendants' motion to enforce a settlement agreement. *See* Dkt. No. 70. On May 3, 2023, Plaintiffs submitted a reply affidavit of their former attorney Elliot Ginsburg. Dkt. No. 74. Defendants move to strike that affidavit because Plaintiffs did not request leave to file a sur-reply. Dkt. No. 75. The motion is denied. Defendants supporting memorandum of law sought enforcement of the written settlement agreement based on the four-factor test annunciated in *Winston v. Mediafare Entm't Corp.*, 777 F.2d 78, 80 (2d Cir. 1985). Dkt. No. 70-1 at 6–11. For the first time in their reply, Defendants submitted additional facts not submitted in connection with their motion: that, during a phone conference on February 22, 2023, Ginsburg (who was then counsel for Plaintiffs) and Defendants reached an agreement on the remaining disputed issues. *See* Dkt. No. 73 at 2–4. Although Plaintiffs should have moved to file a sur-reply, the Court has discretion to ignore that procedural error. The sur-reply, which is limited to addressing the new argument and evidence in Defendants' reply, is appropriate. *See Sec. & Exch. Comm'n v. Ripple Labs, Inc.*, 2022 WL 329211, at *3 (S.D.N.Y. Feb. 3, 2022) (“Courts grant leave to file sur-replies when they address arguments raised for the first time in a reply brief.”).

The Court will hold a telephonic Status Conference on Monday, May 8, 2023 at 2:00 p.m. to discuss the scheduling of an evidentiary hearing on the motion to enforce the settlement agreement. At the Status Conference, the parties should be prepared to discuss the evidence and witnesses that they will present at the hearing. The parties are directed to dial into the Court's teleconference number at 888-251-2909, Access Code 2123101, and follow the necessary prompts.

SO ORDERED.

Dated: May 4, 2023
New York, New York

LEWIS J. LIMAN
United States District Judge